

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP594

Cir. Ct. No. 1993CF933960

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MAURICE MONTELL HARDY,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Curley, P.J., Kessler, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Maurice Montell Hardy, *pro se*, appeals the circuit court's order denying his motion brought pursuant to WIS. STAT. § 974.06

(2011-12),¹ challenging his 1996 conviction for second-degree assault. He argues that his conviction should be overturned because the Milwaukee Police Department has destroyed the physical evidence from his case. We affirm the circuit court's order denying his motion.

¶2 Hardy has completed serving his sentence for second-degree sexual assault imposed in 1996. WISCONSIN STAT. § 974.06(1) allows “a prisoner in custody under sentence of a court” to raise limited postconviction challenges. *Id.* The person must be in custody on the sentence the person wants to challenge in order to bring a motion for relief under § 974.06. *See State v. Bell*, 122 Wis. 2d 427, 429-30, 362 N.W.2d 443 (Ct. App. 1984). Because Hardy is no longer in custody serving his sentence for second-degree sexual assault, he is prohibited from challenging his conviction under § 974.06.

By the Court.—Order affirmed.²

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² We have amended the caption to reflect that Hardy appeals from an order denying his challenge to his criminal conviction, not from the order committing him as a sexually violent person pursuant to WIS. STAT. Ch. 980.

